

Shubhada S Kadam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) 598 OF 2023
IN
WRIT PETITION NO. 32065 OF 2022

Aadil Ebrahim & Anr ...Applicant
In the mater between
Nisha Pradeep Pandya alias Nisha Amit Gor & ...Petitioners
Anr
Versus
Union of India & Ors ...Respondents
And
Maharashtra State Women's Council Adoption ...Proposed
Group at Maharashtra State Women's Council Respondents

Mr Cyrus Ardeshir, Ooril Panchal, Ziyad Madon & Danish Qureshi,
i/b Mahimtura & Co, for the Applicant.
Mr Vishal Kanade, with Tanaya Patankar, i/b Sameer K Sawant &
Rakesh Kapoor & Co, for the Petitioners.
Mr Sandesh D Patil, i/b Anusha P Amin, for Respondent No. 1.
Mrs Jyoti Chavan, AGP, for the Respondent-State.

CORAM G.S. Patel &
S.G. Dige, JJ.
DATED: 10th January 2023

PC:-

1. The Writ Petition challenges the vires of the Juvenile Justice (Care and Protection of Children) Amendment Act 2021 to the extent that the word 'Court' is replaced with 'District Magistrate'.

The effect of this amendment according to the Petitioners and the Intervenors is that an exclusive jurisdiction over all adoptions including foreign adoptions will now be with the District Magistrate. Until now at least adoptions were with the judges of the High Court and many of us have, while on the Bench, handled these cases. It is not shown to us that there has been any complaint about the handling of these cases. We have yet to see the justification for the amendment. The matter has been pending since October 2022. We are now told that there should be no stay on the implementation of the amendment and that the Government will file its reply. We do not think that the matters require to go through multiple cycles of the same arguments.

2. While considering interim relief, we must bear in mind the primary objective which is the interest of the children and infants who are to be adopted whether these are domestic or foreign adoptions. The concerns of the adoptive parents are also involved. In considering ad-interim relief, we have to bear in mind the interests of the minors who are put up for adoption and the interests of the adopted parents. Presently, the adoptions are being handled by Single Judges of this Court. This has continued for a very long period of time and nothing is shown to us to indicate why for a limited period of time of about four weeks this should not be continued until we finally hear the challenge. No prejudice will be caused to any party if the existing system continues. On the contrary, the primary interest would be protected. Moreover, we are granting interim relief only until the next date and not indefinitely for a long period of time. We are not impressed by the arguments of delays for disposals because at least in this High Court, the the

adoptions jurisdiction is one in which there is no backlog at all. Adjournments are almost never requested or ordered and disposals take place on a weekly basis.

3. We are also mindful of the fact that if the petitioners succeed, any orders that are passed by the District Magistrate would be immediately vulnerable.

4. Since there is a vires challenge, we issue notice to the Attorney General. A copy is to be provided to the office of Additional Solicitor.

5. The Interim Application is allowed in terms of prayer clause (a).

6. The intervenor will be joined as respondents without need of reverification. Service of the amended petition is not required.

7. All concerned are at liberty to put in brief notes of written arguments along with properly indexed and paginated compilations of authorities.

8. In the meantime, there will be an ad-interim order only until the next date in terms of prayer clauses (d), (e) and (f) of the petition which reads as follows:

d. Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased

to stay the effect, implementation and purport of the letter dated 30th September, 2022 issued by Respondent No.2;

e. Pending the final hearing and disposal of the present Petition, the Honb'ble Court may be pleased to direct the Respondents not to transfer pending adoption matters before the District Magistrates for adjudication.

f. Pending the final hearing and disposal of the present Petition, the Hon'ble Court may be pleased to direct the Hon'ble Courts to continue with the adjudication of the adoption matters that are pending on their record and file.

9. Additionally, the safer and more prudent course of action would be to allow all matters to be placed before the learned Single Judge of this Court who is assigned those matters. Those orders may be continued to be passed until the challenge is finally decided.

10. The Petition will be listed peremptorily for final disposal on 14th February 2023 at 2.30 pm.

(S. G. Dige, J)

(G. S. Patel, J)